IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

AO. No. 86 of 2006

Date of decision: 10-8-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 10-8-2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal from Order No.86 of 2006

United India Insurance Company Ltd.
Through its Divisional Manager
Divisional Office, Ranipur Morh
District Haridwar .....Appellant.

Versus

1. Smt. Rikhuli Devi Bisht W/o late Prem Singh
2. Smt. Sumati Devi Bisht W/o late Dinesh Singh Bisht
3. Kamal Singh Bisht S/o late Dinesh Singh Bisht
4. Km. Seema Bisht D/o late Dinesh Singh Bisht
5. Km. Meena Bisht D/o late Dinesh Singh Bisht
   Respondent nos.3 to 5 are minor
   through their natural guardian
   Mother Smt. Sumati Devi Bisht
   W/o late Dinesh Singh Bisht
   All R/o village Silan Gaon
   P.O. Singora, Patti Kathulsyun
   Tehsil Srinagar
   District Pauri Garhwal .....Respondents
6. Sunil Singh Bisht S/o late Netra Singh Bisht
   R/o Village-Silan Gaon, P.O.-Singora,
   Patti-Kathulsyun, Tehsil-Srinagar,
   District-Pauri Garhwal
   (Owner of Vehicle No. U.P.07 C-407)

Delivery of Judgment :-10th August, 2006

Mr. Pankaj Purohit learned counsel for the appellant
Mr. Anil Dabral learned counsel for the respondent nos.1 to 5.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per :- Hon'ble J.C.S. Rawat, J.

This appeal under section 173 of the Motor Vehicles Act has been filed against the judgment and award dated 17.11.2005 passed by the Motor Accidents Claims Tribunal/District Judge, (hereinafter referred as 'Tribunal'), Pauri Garhwal in M.A.C.P. No.154/2004, whereby the learned Tribunal had awarded a sum of Rs.13,67,000/- as compensation alongwith interest @ 9% per annum to the claimants against the United India Insurance Company Ltd.-appellant.

2. Brief facts of the case are that the claimants – respondent nos.1 to 5 had filed a claim petition before the Tribunal alleging therein that on 27.11.2004 the deceased-Dinesh Singh Bisht was travelling towards Khathuli from Chaubatta in the offending Jeep No. UP07C-407, which was being driven rashly and negligently by its driver-Anand Singh. When the offending vehicle reached at Thapladhar it fell into a ditch due to rash and negligent driving of its driver. The deceased had sustained the grievous injuries on his person and died at the spot. An FIR of the said incident was lodged. It had also been alleged that the deceased was working as 'Junior Operator' in the Indian Oil Corporation, Delhi. He was aged about 35 years and was earning Rs.15,000/- pm at the time of incident. Hence, the claim had been preferred by the legal heirs and dependents of the deceased. An amount of Rs.31,20,000/- had been claimed as compensation.

3. The opposite parties filed their written statements and contested the case. The respondent No.6-Sunil Singh Bisht, who was the owner of the offending vehicle, had alleged in the written statement that the driver of the offending vehicle was not rash and negligent at the time of accident. The driver of the offending vehicle was having a valid driving licence at the relevant time. The documents of the offending vehicle were also valid and it was insured with the United India Insurance Company Ltd. and as such he was not liable to pay the compensation. The United India Insurance Company-appellant had also filed the written statement in which it had alleged that it was not liable to pay the compensation because the offending vehicle had no valid registration and fitness certificate and it was being plied

against the terms and conditions of the insurance policy. The driver of the offending vehicle had no valid driving licence.

4. On the basis of the pleadings, the learned Tribunal framed necessary issues in the case and ultimately, the learned Tribunal had come to the conclusion that the offending jeep fell into a ditch due to rash and negligent driving of its driver-Anand Singh and due to which the deceased sustained the injuries on his person and died at the spot. It was further held that the jeep's driver had a valid driving licence at the material time and the offending jeep had also a valid registration, permit and the fitness certificate at the relevant time. The offending jeep was not plied against the terms and conditions of the insurance policy. The learned Tribunal had assessed the age of the deceased as 35 years. It was further held that he was earning a sum of Rs.15,000/- pm or say Rs. 1,80,000/- per annum. The learned Tribunal, after deducting 1/3rd income for personal expenses had fixed the income of the deceased as Rs.1,20,000/- per annum. The learned Tribunal had applied the multiplier of "17", the amount comes Rs.20,40,000/-. The learned Tribunal had also deducted 1/3rd of Rs.20,40,000/- because the amount of compensation was given as one time payment. Now, it comes to Rs.13,60,000/-. Apart this, Rs.2000/- for the last rites and Rs.5000/- for love and affection had been awarded to the claimants. Thus, the Tribunal had awarded a sum of Rs.13,67,000/- as compensation alongwith interest @ 9% per annum in favour of the claimants against the appellant-The United India Insurance Com. Ltd.

5. Feeling aggrieved by this, the Insurance Company-appellant has preferred the present appeal.

6. Heard Sri Pankaj Purohit learned counsel for the appellant and Sri Anil Dabral learned counsel for the claimants-respondent nos.1 to 5. None appeared on behalf of the respondent no.6-owner of the offending vehicle, despite service.

6. So far as the finding that the accident took place due to rash and negligent driving of its driver is concerned, it has not been challenged by the driver and owner of the offending jeep or the appellant-Insurance Company. So far as the finding regarding the valid registration and fitness is concerned, the learned Tribunal had recorded that the vehicle had a valid registration and fitness certificate at the time of the incident. The said finding has not been challenged by the Insurance Company. As such, both the findings had attained the finality.

7. It was contended on behalf of the appellant-Insurance Company that at the time of the accident the offending vehicle was being driven by its driver-Anand Singh and he was not having the valid licence to drive the transport vehicle. The driver of the offending vehicle was authorized only to drive the light motor vehicle (LMV). It was further contended that the appellant could not be held liable to pay the compensation as the offending vehicle was contravening the terms and conditions of the insurance policy. Learned counsel for the claimants refuted the contention and contended that the appellant had not pleaded in his written statement filed before the learned Tribunal that

the driver of the offending vehicle did not possess the valid driving licence as he was driving the transport vehicle. Learned counsel for the claimants contended that if the driver had a licence for a particular type of vehicle he cannot be said to have no licence for driving the another type of the vehicle which is of the same category but of the different type. Perusal of the record reveals that Anand Singh-driver had a valid licence to drive the light motor vehicle (LMV). The registration certificate of the offending vehicle filed by its owner also reveals that the offending jeep had been categorized as “Light Motor Vehicle”. The insurance certificate reveals that the offending jeep was being used as a taxi. The driver of the offending vehicle had a driving licence to drive the light motor vehicle and the offending jeep comes under the category of “light motor vehicle”. It has been held by the Hon’ble Supreme Court in **National Insurance Company Ltd. Vs. Swaran Singh reported in 2004(3) SCC 297 & 2004(1) U.D. p/195** that under the Act holding of a valid driving licence is one of the conditions of the contract of insurance. Driving of a vehicle without a valid licence is an offence. Whereas in section 3 the words used are “effective licence”, it has been differently worded in section 149(2) i.e. “duly licensed”. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of section 141 of the Act but section 149 permits to insurance as regards third-party risks. A provision of a statute which is penal in nature vis-à-vis a provision which is beneficent to a third party must be interpreted differently. It is also well known that the expressions contained in different provisions are ordinarily construed differently. The words “effective licence” used in section

3, therefore cannot be imported into section 149(2) of the Act. Moreover, the words “duly licensed” used in section 149(2) are used in the past tense. The Hon’ble Supreme Court has further held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle where is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately. In each case, on evidence led before the Tribunal, a decision had to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was mechanical failures and similar other causes having no nexus with the driver not possessing the requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The Hon’ble Supreme Court has further held in Swaran Singh (supra) that:-

> *“90. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not*

constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

110 (iii). The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

13. In the case in hand, the Insurance Company had not pleaded in the written statement filed before the learned Tribunal that the accident occurred due to lack of experience of the driver or due to wring driving. It would not be out of context to mention here that the driver had a licence to drive the light motor vehicle. If he had a driving licence to drive the light motor vehicle in which the offending vehicle i.e. jeep is also included it cannot be said that the driver would have no experience to drive the offending jeep while he had taken the passengers on hire and reward.

14. In view of the above, the learned Tribunal was justified in holding that the driver of the offending jeep had a valid driving licence and we do not find any force in the contention advanced by the learned counsel for the appellant.

15. Learned counsel for the appellant has relied upon the decision of the Hon'ble Supreme Court in **National Insurance Corp. Ltd. Vs. Kanti Devi (Mrs) & other 2005(5) SCC 789** in which a specific plea was taken by the insurance company that the driver did not possess a valid driving licence as he was authorised to drive the "light motor vehicles" while he was driving a transport vehicle (Tata Truck 407). The Tribunal did not consider the plea of the insurance company. The Hon'ble Supreme Court while remanding the matter to the Tribunal had observed that the matter would be decided keeping in view of the principle enunciated in Swaran Singh case (supra). In Kanti Devi case (supra), the decision of Swaran Singh case was not placed before either the Tribunal or the High Court. But, in the case in hand, the insurance company had not taken any specific plea in the written statement filed before the Tribunal, whereas in Kanti Devi case (supra) the insurance company had taken the plea before the Tribunal. In the case in hand, the driver of the offending vehicle had a driving licence to drive the light motor vehicle, which includes the offending jeep also. In the case of Kanti Devi (supra), the driver had a driving licence of 'light motor vehicle' and he was driving a truck 407, whereas in the case in hand the driver was driving the jeep in which he was carrying the passengers for hire and reward. Thus, the decision of Kanti Devi (supra) is not applicable in the case in hand.

16. Learned counsel for the Insurance Company further contended that the quantum of award was excessive and exorbitant. It was further contended that the rate of interest awarded thereon by the Tribunal was also on the higher side and as such the Tribunal had failed to appreciate the evidence on record. Learned counsel for the claimants refuted the contention and contended that the amount awarded by the Tribunal was not excessive and exorbitant. It was further contended by the learned counsel for the claimants that the Insurance Company has no right to challenge the quantum of award. The Insurance Company cannot challenge the rate of interest that it was on the higher side. This defence is not available as provided under section 149(2) of the Motor Vehicles Act. Learned counsel for the appellant could not indicate that application under Sec. 170 of the Motor Vehicles Act for permission to contest the case was moved before the Tribunal or the Tribunal granted the permission. There is neither permission of the Tribunal under Sec. 170 of the Motor Vehicles Act nor there is any finding that there has been collusion between the owner of the vehicle in question and the claimants. Perusal of the record reveals that there was no collusion amongst the owner, driver and the claimants.

17. In view of the above, the appellant-Insurance Company cannot be allowed to challenge the finding on quantum of compensation by filing the present appeal. The Insurance Company can file the appeal on limited grounds under section 149 of the Act. We are fortified in our view by the decision of the Apex Court in **National Insurance Company Ltd., Chandigarh Vs. Nicolletta Rohtagi and others, reported in 2002(7)**

S.C.C. p/456 wherein the Apex Court has observed that unless the condition precedent specified in Section 170 of the Motor Vehicles Act, 1988 is satisfied, the insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim, in such cases it is open for the insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission has been granted and the insurer has been allowed to contest the claim on merits, it is open to the insurer to file an appeal against an award on merits. It has also been observed in that case by virtue of Sec. 170 of the Motor Vehicles Act, where in course of an inquiry the Claims Tribunal is satisfied that (a) there is collusion between the person making the claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. The Tribunal has also to give the finding on this point while deciding the application. In the instant case, the appellant does not fulfill the requirement as laid down in the above decision. The Apex Court in **Nicolletta Rohtagi's** case (supra) further held that "*even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of*

compensation as well as findings as regard negligence or contributory negligence of the offending vehicle. ”

18. In view of the foregoing discussion, the appeal lacks merit and liable to be dismissed.

19. The appeal is dismissed. No orders as to costs.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 10.08.2006
LSR